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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,335	11/19/2001	Richard L. Pellegrini	106679.01	8588

7590 05/18/2007

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EXAMINER	
BROWN, MICHAEL A	
ART UNIT	**PAPER NUMBER**
3772	

MAIL DATE	DELIVERY MODE
05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/988,335	PELLEGRINI ET AL.	
	Examiner	Art Unit	
	Michael Brown	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-40,45,58,59 and 63-99* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-40, 45, 58-59 and 63-99* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24-25, 27-29, 31-34, 37-38, 40, 45, 58-59, 63-65 67-71, 73-75, 77, 79-86, 88-90, 92 and 94-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duerer in view of Gonsett, along with Durette.

Duerer discloses in figures 1-2 an eye shield comprising a sheet member 22, comprising an eye-covering portion (fig. 1), sized to fit entirely within a human eye socket (oval shaped just as the present invention is), a metallic layer (aluminum that is a foil) 26, attached to the sheet (fig. 2), to protect eye from sun light, the metallic layer has a plan-view shape (fig. 2), the plan-view shape including an eyeball-covering area (fig. 1), that completely covers an eyeball, the plan-view shape being continuous over the eyeball-covering area, the metallic layer is smaller than the sheet material and does not overlap a peripheral portion of the sheet member (fig. 2), the metallic layer is a pure metal (aluminum), the metallic layer is not part of a metallized polymer layer, a method of protecting a patient's eye by adhering a disposable, light resistant eye patch over the eye entirely within a corresponding eye socket of the patient in at least one dimension of the eye socket, the sheet member is sized to fit entirely inside the eye socket in both a

lateral and vertical dimension of the eye socket (the oval shaped provides for the sheet member to fit within the lateral and vertical dimensions of the eye socket), the peripheral portion extends along the entire periphery of the sheet member (fig. 1) and the metallic layer doesn't overlap any part of the peripheral portion (fig. 1), the method is light treatment and the plain view is continuous over its entirety (fig. 1). However, Duerer doesn't disclose the light being a laser light, the patch being without something to hold it onto the face (i.e. a strap) or the metallic material being stainless steel. Gonsett teaches in figure 6 an eye patch A, that is (egg shaped) and made of metallic material (col. 2, lines10-12). The eye patch A is sized and shape (ovoid, egg shaped) to fit within the vertical and lateral dimension of the eye socket. Durette teaches in figures 1-5 an eye shield comprising a metallic layer 10, (stainless steel, col. 2, lines 10-13), used to prevent laser light from pass therethrough (col. 1, lines 37-41). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the eye shield disclosed by Duerer could be fabricated as an eye patch as taught by Gonsett. The metallic layer (stainless steel) as taught by Durette could be substituted for the metallic layer disclosed by Duerer in order to used the eye patch to prevent a laser light from passing therethrough. The thickness of the sheet member and the thickness of the metal layer recited in the claims aren't critical dimensions that provide any novelty over the prior art. The sheet 22, is only located on one side of the metallic layer. Note: Most people are categorized into three distinctive groups. The first is Caucasoid, the second is Mongoloid, who tend to have an epicantic fold, imparting an almond shape to the eye. The third group of people is referred to as Negroid. These

three groups of people tend to have different shaped eye. Thus, an eye patch may fit into the eye socket in a vertical and lateral direction on one group of the people. While on the other hand the same eye patch might fits outside of the eye socket on another group of people. Also, a large man's eye socket might allow the eye patch to fit vertically and laterally within the eye socket. On the other hand the same eye patch will cover the entire eye socket and a portion of the face of a small child.

Claims 26, 72 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Krupnick.

Krupnick teaches in figures 1-3 an eye patch comprising a sheet 24 having an adhesive 30, applied over at least the peripheral edge of the sheet. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive layer as taught by Krupnick could be incorporated into the eye patch disclosed by Duerer and taught by Gonsett and Durette in order to use the adhesive to attach the eye patch to the eye socket.

Claims 30, 76 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Langley.

Langley teaches in figures 1-4 an eye patch comprising a sheet member 10 made of biocompatible foamed plastic material (col. 3, lines 37-42). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the sheet member disclosed by Duerer and taught by Gonsett and Durette could be

fabricated of a biocompatible foam plastic material as taught by Langley because it is a soft material that wouldn't chafe the skin around the eye, yet it is durable enough to protect the eye.

Claims 35-36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Policastro.

Policastro discloses in figures 1-10 a diffuse reflective laser barrier that can be an eye shield that is made of pure aluminum, an aluminum alloy or a metal alloy (col. 4, lines 16-28). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the pure aluminum, aluminum alloy or the metal alloy as taught by Policastro could be used as the metallic layer to block laser light from a patient's eye. Policastro provides the needed teaching that aluminum as disclosed by Duerer could be used to also block laser light.

Claims 66, 78 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Kohn.

Kohn teaches in figure 9 an eye patch comprising a tab 34. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the tab as taught by Kohn could be incorporated into the eye patch disclosed by Duerer and taught by Gonsett and Durette in order to use the tab to grasp and remove the eye patch from around the eye socket.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Brown/
May 11, 2004